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San Francisco, California 94108-2281
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Attorneys for Defendant
TOP INNOVATIONS, INC.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

TIEN NGUYEN,
Plaintiff,
vs.
TOP INNOVATIONS, INC., COSTCO and Does
1 to 20,
Defendants.

Case No. C 07 04386 HRL

**CERTIFICATE OF SERVICE OF
NOTICE TO ADVERSE PARTY OF
REMOVAL TO FEDERAL COURT**

Iris Nishimoto certifies and declares:

I am over the age of 18 years and not a party to this action.

My business address is 601 California Street, 21st Floor, San Francisco, California 94108-2826, which is located in the city, county and state where the mailing described below took place.

On August 24, 2007, I had a copy of the Notice to Adverse Party of Removal to Federal Court, dated August 24, 2007, which is attached to this Certificate hand delivered to:

Gregg L. Kay, Esq.

Norland & Kays

111 North Market Street

San Jose, CA 95113

Tel. (408) 993-8100

1 I declare under penalty of perjury that the foregoing is true and correct.

2 Executed on August 27, 2007

3 

4 IRIS NISHIMOTO

1 GEORGE D. YARON, ESQ. (State Bar #96246)
2 KEITH E. PATTERSON, ESQ. (State Bar #225753)
3 **YARON & ASSOCIATES**
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8 Attorneys for Defendant
9 TOP INNOVATIONS, INC.

10
11 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 FOR THE COUNTY OF SANTA CLARA
13

14 TIEN NGUYEN,

15 Plaintiff,

16 vs.

17 TOP INNOVATIONS, INC., COSTCO and Does
18 1 to 20,

19 Defendants.
20

Case No. 107CV088619

**NOTICE TO ADVERSE PARTY OF
REMOVAL TO FEDERAL COURT
PURSUANT TO
28 U.S.C. §§ 1441(b) and 1446**

[Diversity of Citizenship]

21 TO: PLAINTIFF AND HIS ATTORNEY OF RECORD:

22 PLEASE TAKE NOTICE THAT a Notice of Removal of this action was filed in the United
23 States District Court for the Northern District of California on August 24, 2007, under Federal Case
24 No. 07-cv-04386 HRL.

25 A copy of the said Notice of Removal is attached to this Notice, and is served and filed
26 herewith.

27 DATED: August 24, 2007

YARON & ASSOCIATES

28 By: 

GEORGE D. YARON
KEITH E. PATTERSON
Attorneys for Defendant
TOP INNOVATIONS, INC.

EXHIBIT A

GEORGE D. YARON, ESQ. (State Bar #96246)
KEITH E. PATTERSON, ESQ. (State Bar #225753)
YARON & ASSOCIATES
601 California Street, 21st Floor
San Francisco, California 94108-2281
Telephone: (415) 658-2929
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Attorneys for Defendant
TOP INNOVATIONS, INC.

ORIGINAL
FILED

07 AUG 24 PM 2:36

RICHARD W. WIEKING
CLERK
U.S. DISTRICT COURT
NO. DIST. OF CA S.J.

E-FILING

ADR

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

TIEN NGUYEN,

Plaintiff,

vs.

TOP INNOVATIONS, INC., COSTCO and Does
1 to 20,

Defendants.

Case No. **C07 04386**

HRL

**NOTICE OF REMOVAL OF ACTION
UNDER 28 U.S.C. §§ 1441(b) and 1446**

[Diversity of Citizenship]

TO THE CLERK OF THE UNITED STATES DISTRICT COURT FOR THE NORTHERN
DISTRICT OF CALIFORNIA:

PLEASE TAKE NOTICE that Defendant TOP INNOVATIONS, INC. ("TOP"), by counsel, removes the above-entitled action from the Superior Court of the State of California, in and for the County of Santa Clara, to the United States District Court for the Northern District of California, pursuant to 28 U.S.C. §§ 1441(b) and 1446.

1. On or about June 25, 2007, Plaintiff TIEN NGUYEN ("Plaintiff") filed a Complaint entitled *Tien Nguyen vs. Top Innovations*, et al., in the Superior Court of the State of California for the County of Santa Clara, as Case No. 107CV088619 against TOP, a Corporation, and COSTCO, a Corporation, and DOES 1 through 100, inclusive. Pursuant to 28 U.S.C. § 11446(a), a copy of the Summons and Complaint are attached hereto as Exhibit "A." The Civil Lawsuit Notice and

1 Alternative Dispute Resolution Information Sheet are attached hereto as Exhibit "B." The Summons,
2 Complaint, Civil Lawsuit Notice, and Alternative Dispute Resolution Information Sheet are the only
3 documents which have been served upon TOP in this action.

4 2. On July 28, 2007, Plaintiff served a copy of his Complaint, and the related materials,
5 on TOP via certified mail.

6 3. The amount in controversy in this action exceeds the sum of \$75,000.00, exclusive
7 of interest and costs. This is based on statements of Plaintiff's counsel, wherein he demanded to
8 settle the case for more than \$75,000.00. (Declaration of George D. Yaron in support of Notice of
9 Removal, ¶3).

10 4. TOP was and is a Corporation duly organized and existing by virtue of the laws of
11 the State of Kansas, with its principal place of business in the city of Kansas City. (Declaration of
12 George D. Yaron, ¶5).

13 5. Upon information and belief, Defendant COSTCO is a company organized and
14 existing under the laws of the State of Washington with its principal place of business in the City of
15 Issaquah, Washington. (Declaration of George D. Yaron, ¶6).

16 6. Upon information and belief, Plaintiff is a resident of California. (Declaration of
17 George D. Yaron, ¶4).

18 7. TOP has not answered Plaintiff's Complaint.

19 8. TOP is not aware of service on any other Defendant

20 9. Venue is proper in the United States District Court for the Northern District of
21 California pursuant to 28 U.S.C. §1391(a). Based on Plaintiff's Complaint, the aforesaid state action
22 was initially filed in the Superior Court of California, County of Santa Clara, because a substantial
23 part of the events or omissions giving rise to the claim occurred. This is within the jurisdiction of
24 the Northern District of California.

25 10. This is a civil action over which this Court has original subject matter jurisdiction
26 pursuant to 28 U.S.C. §1332, and removal is proper under 28 U.S.C. §1441(b) and §1446, based on
27 diversity of citizenship, in that:

28 (a) TOP is informed and believes that Plaintiff is a citizen of the State of California.

(Declaration of George D. Yaron, ¶4).

(b) Pursuant to 28 U.S.C. §1332(c), "a corporation shall be deemed a citizen of any State where it has its principal place of business." TOP is a Corporation organized and existing under the laws of the State of Missouri, with its principal place of business in the City of Kansas. COSTCO is a Corporation organized and existing under the laws of the State of Washington, with its principal place of business in the City of Issaquah, Washington. (Declaration of George D. Yaron, ¶¶5,6).

(c) Plaintiff purports to allege three causes of action against Defendants TOP and COSTCO: (1) Negligence, (2) Breach of Warranty, and (3) Strict Liability. Plaintiff alleges that TOP manufactured or assembled the product Top Innovations, Inc., and sold the product to COSTCO. (See Exhibit "A").

(d) Although TOP denies any liability as to Plaintiff, TOP has a reasonable and good faith belief that the amount in controversy in this action exceeds the sum of \$75,000.00, exclusive of interest and costs. Plaintiff does not plead a specific dollar amount in his Complaint. However, Plaintiff's counsel requested to settle the case for more than \$75,000.00. (Declaration of George D. Yaron, ¶3).

(e) The Complaint was mailed to TOP on July 28, 2007, via certified mail. Thirty days after service was deemed effective has not yet expired. Therefore, TOP filed this Notice of Removal within thirty (30) days from the date it first learned of a basis upon which to remove this action, as required by 28 U.S.C. Section 1446(b). Therefore, removal is timely pursuant to 28 U.S.C. §1446(b) and Federal Rule of Civil Procedure 6(a). (Declaration of George D. Yaron, ¶7).

(f) Pursuant to 28 U.S.C. §1441(a), the citizenship of Defendants sued under fictitious names shall be disregarded for removal purposes. Therefore, the existence of "DOES 1-20" should be disregarded and do not deprive this Court of jurisdiction.

11. Written notice of the filing of this Notice of Removal will be given to Plaintiff and Defendant COSTCO. A copy of the Notice of Removal will be filed with the Clerk of the Superior Court of California, County of Santa Clara, as required by 28 U.S.C. §1446(d).

1 WHEREFORE, TOP prays that this action be removed from the Superior Court of the State
2 of California, in and for the County of Santa Clara, to this Court.

3
4 DATED: August 24, 2007

YARON & ASSOCIATES

5
6 By: 

7 GEORGE D. YARON
8 KEITH E. PATTERSON
9 Attorneys for Defendant
TOP INNOVATIONS, INC.

EXHIBIT A

SUMMONS
(CITACION JUDICIAL)

SUM-100

NOTICE TO DEFENDANT:**(AVISO AL DEMANDADO):**TOP INNOVATIONS, INC., COSTCO and
DOES 1 to 20**YOU ARE BEING SUED BY PLAINTIFF:****(LO ESTÁ DEMANDANDO EL DEMANDANTE):**

TIEN NGUYEN

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

107 CV 088610

2007 JUN 25 P 1:13

A. FLORES

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.courtinfo.ca.gov/selfhelp/espanol), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California (www.courtinfo.ca.gov/selfhelp/espanol) o poniéndose en contacto con la corte o el colegio de abogados locales.

The name and address of the court is:

(El nombre y dirección de la corte es):

SUPERIOR COURT, STATE OF CALIFORNIA
COUNTY OF SANTA CLARA
191 North First Street
San Jose, CA 95113

CASE NUMBER
(Número de Caso):

107 CV 088610

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

GREGG L. KAYS, ESQ. (SBN 82052)

(408) 993-8100 (408) 993-8100

NORLAND & KAYS

111 North Market Street

San Jose, CA 95113

DATE:

JUN 26 2007

Kiri Toms

A. FLORES

Clerk, by: Executive Officer/Clerk
(Secretario)Deputy
(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

NOTICE TO THE PERSON SERVED: You are served

1. ☐ as an individual defendant.
2. ☐ as the person sued under the fictitious name of (specify):

- 3.
- ☐
- on behalf of (specify):

- under: ☐ CCP 416.10 (corporation) ☐ CCP 416.60 (minor)
☐ CCP 416.20 (defunct corporation) ☐ CCP 416.70 (conservatee)
☐ CCP 416.40 (association or partnership) ☐ CCP 416.90 (authorized person)
☐ other (specify):

- 4.
- ☐
- by personal delivery on (date):

Page 1 of 1

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): GREGG L. KAYS, ESQ. (SBN 82052) NORLAND & KAYS 111 North Market Street SUITE 414 San Jose, CA 95113 TELEPHONE NO: (408) 993-8100 FAX NO. (Optional): (408) 993-8100 E-MAIL ADDRESS (Optional): ATTORNEY FOR (Name): TIEN NGUYEN		PLD-PI-001 FOR COURT USE ONLY JUN 25 P 1:48 S. FLORES
SUPERIOR COURT OF CALIFORNIA, COUNTY OF SANTA CLARA STREET ADDRESS: 191 North First Street MAILING ADDRESS: CITY AND ZIP CODE: San Jose, CA 95113 BRANCH NAME:		
PLAINTIFF: TIEN NGUYEN DEFENDANT: TOP INNOVATIONS, INC., COSTCO and		
<input checked="" type="checkbox"/> DOES 1 TO <u>20</u> COMPLAINT—Personal Injury, Property Damage, Wrongful Death <input type="checkbox"/> AMENDED (Number): Type (check all that apply): <input type="checkbox"/> MOTOR VEHICLE <input checked="" type="checkbox"/> OTHER (specify): Product Liability <input type="checkbox"/> Property Damage <input type="checkbox"/> Wrongful Death <input type="checkbox"/> Personal Injury <input type="checkbox"/> Other Damages (specify):		
Jurisdiction (check all that apply): <input type="checkbox"/> ACTION IS A LIMITED CIVIL CASE Amount demanded <input type="checkbox"/> does not exceed \$10,000 <input checked="" type="checkbox"/> ACTION IS AN UNLIMITED CIVIL CASE (exceeds \$25,000) <input type="checkbox"/> ACTION IS RECLASSIFIED by this amended complaint <input type="checkbox"/> from limited to unlimited <input type="checkbox"/> from unlimited to limited		CASE NUMBER: 107CV088612

1. Plaintiff (name or names): **TIEN NGUYEN**

alleges causes of action against defendant (name or names): **TOP INNOVATIONS, INC., COSTCO, et al.,**

2. This pleading, including attachments and exhibits, consists of the following number of pages: **4**

3. Each plaintiff named above is a competent adult

a. ☐ except plaintiff (name):

- (1) ☐ a corporation qualified to do business in California
- (2) ☐ an unincorporated entity (describe):
- (3) ☐ a public entity (describe):
- (4) ☐ a minor ☐ an adult
 - (a) ☐ for whom a guardian or conservator of the estate or a guardian ad litem has been appointed
 - (b) ☐ other (specify):
- (5) ☐ other (specify):

b. ☐ except plaintiff (name):

- (1) ☐ a corporation qualified to do business in California
- (2) ☐ an unincorporated entity (describe):
- (3) ☐ a public entity (describe):
- (4) ☐ a minor ☐ an adult
 - (a) ☐ for whom a guardian or conservator of the estate or a guardian ad litem has been appointed
 - (b) ☐ other (specify):
- (5) ☐ other (specify):

☐ Information about additional plaintiffs who are not competent adults is shown in Attachment 3.

SHORT TITLE: NGUYEN v. TOP INNOVATIONS, INC., et al.

PLD-PI-001

CASE NUMBER:

4. ☐ Plaintiff (name):

is doing business under the fictitious name (specify):

and has complied with the fictitious business name laws.

5. Each defendant named above is a natural person

a. ☒ except defendant (name): TOP INNOVATIONS, INC.c. ☐ except defendant (name):(1) ☐ a business organization, form unknown(2) ☒ a corporation(3) ☐ an unincorporated entity (describe):(4) ☐ a public entity (describe):(5) ☐ other (specify):(1) ☐ a business organization, form unknown(2) ☐ a corporation(3) ☐ an unincorporated entity (describe):(4) ☐ a public entity (describe):(5) ☐ other (specify):b. ☒ except defendant (name): COSTCOd. ☐ except defendant (name):(1) ☐ a business organization, form unknown(2) ☒ a corporation(3) ☐ an unincorporated entity (describe):(4) ☐ a public entity (describe):(5) ☐ other (specify):(1) ☐ a business organization, form unknown(2) ☐ a corporation(3) ☐ an unincorporated entity (describe):(4) ☐ a public entity (describe):(5) ☐ other (specify):☐ Information about additional defendants who are not natural persons is contained in Attachment 5.

6. The true names of defendants sued as Does are unknown to plaintiff.

a. ☐ Doe defendants (specify Doe numbers): _____ were the agents or employees of other named defendants and acted within the scope of that agency or employment.b. ☐ Doe defendants (specify Doe numbers): _____ are persons whose capacities are unknown to plaintiff.7. ☐ Defendants who are joined under Code of Civil Procedure section 382 are (names):

8. This court is the proper court because

a. ☐ at least one defendant now resides in its jurisdictional area.b. ☐ the principal place of business of a defendant corporation or unincorporated association is in its jurisdictional area.c. ☒ injury to person or damage to personal property occurred in its jurisdictional area.d. ☐ other (specify):9. ☐ Plaintiff is required to comply with a claims statute, anda. ☐ has complied with applicable claims statutes, orb. ☐ is excused from complying because (specify):

SHORT TITLE: NGUYEN V. TOP INNOVATIONS, INC., et al.

PLD-PI-001

CASE NUMBER:

10. The following causes of action are attached and the statements above apply to each (each complaint must have one or more causes of action attached):

- a. ☐ Motor Vehicle
- b. ☐ General Negligence
- c. ☐ Intentional Tort
- d. ☒ Products Liability
- e. ☐ Premises Liability
- f. ☐ Other (specify):

11. Plaintiff has suffered

- a. ☒ wage loss
- b. ☐ loss of use of property
- c. ☒ hospital and medical expenses
- d. ☒ general damage
- e. ☐ property damage
- f. ☒ loss of earning capacity
- g. ☐ other damage (specify):

12. ☐ The damages claimed for wrongful death and the relationships of plaintiff to the deceased are

- a. ☐ listed in Attachment 12.
- b. ☐ as follows:

13. The relief sought in this complaint is within the jurisdiction of this court.

14. Plaintiff prays for judgment for costs of suit; for such relief as is fair, just, and equitable; and for

- a. (1) ☒ compensatory damages
- (2) ☐ punitive damages

The amount of damages is (in cases for personal injury or wrongful death, you must check (1)):

- (1) ☒ according to proof
- (2) ☐ in the amount of: \$

15. ☐ The paragraphs of this complaint alleged on information and belief are as follows (specify paragraph numbers):

Date: June 25, 2007

GREGG L. KAYS, ESQ.
(TYPE OR PRINT NAME)


(SIGNATURE OF PLAINTIFF OR ATTORNEY)

PLD-PI-001(5)

SHORT TITLE: NGUYEN v. TOP INNOVATIONS, INC., et al.

CASE NUMBER:

FIRST

(number)

CAUSE OF ACTION—Products Liability

Page 4

ATTACHMENT TO ☒ Complaint ☐ Cross-Complaint
 (Use a separate cause of action form for each cause of action.)

Plaintiff (name): TIEN NGUYEN

Prod. L-1. On or about (date): June 23, 2006 plaintiff was injured by the following product:
 SteamFast Model SF-276 2-in-1 Steamer
 Serial #C4276-227044

Prod. L-2. Each of the defendants knew the product would be purchased and used without inspection for defects.
 The product was defective when it left the control of each defendant. The product at the time of injury was being

☒ used in the manner intended by the defendants.☒ used in a manner that was reasonably foreseeable by defendants as involving a substantial danger not readily apparent. Adequate warnings of the danger were not given.

Prod. L-3. Plaintiff was a

☒ purchaser of the product.☐ user of the product.☐ bystander to the use of the product.☐ other (specify):

PLAINTIFF'S INJURY WAS THE LEGAL (PROXIMATE) RESULT OF THE FOLLOWING:

Prod. L-4. ☒ Count One—Strict liability of the following defendants whoa. ☒ manufactured or assembled the product (names): Top Innovations, Inc.b. ☐ Does 1 to 10

designed and manufactured component parts supplied to the manufacturer (names):

c. ☐ Does _____ to _____d. ☒ sold the product to the public (names): COSTCO,e. ☒ Does 11 to 20Prod. L-5. ☒ Count Two—Negligence of the following defendants who owed a duty to plaintiff (names):
 Top Innovations, Inc. and Costcof. ☒ Does 1 to 20Prod. L-6. ☒ Count Three—Breach of warranty by the following defendants (names):
 Top Innovations, Inc. and Costcog. ☒ Does 1 to 20a. ☒ who breached an implied warrantyb. ☐ who breached an express warranty which was☐ written ☐ oralProd. L-7. ☐ The defendants who are liable to plaintiffs for other reasons and the reasons for the liability are☐ listed in Attachment-Prod. L-7 ☐ as follows:

EXHIBIT B

ATTACHMENT A

CIVIL LAWSUIT NOTICE

Superior Court of California, County of Santa Clara
191 N. First St., San Jose, CA 95113

CASE NUMBER: **107CV088619**

READ THIS ENTIRE FORM

PLAINTIFFS (the person(s) suing): Within 60 days after filing the lawsuit, you must serve each defendant with the Complaint, Summons, an Alternative Dispute Resolution (ADR) Information Sheet, and a copy of this Civil Lawsuit Notice, and you must file written proof of such service.

DEFENDANTS (the person(s) being sued): You must do each of the following to protect your rights:

1. You must file a written response to the Complaint, in the clerk's office of the Court, within 30 days of the date the Summons and Complaint were served on you;
2. You must send a copy of your written response to the plaintiff, and
3. You must attend the first Case Management Conference.

Warning: If you do not do these three things, you may automatically lose this case.

RULES AND FORMS: You must follow the California Rules of Court (CRC) and the Santa Clara County Superior Court Local Civil Rules and use proper forms. You can get legal information, view the rules and get forms, free of charge, from the Self-Service Center at 99 Notre Dame Avenue, San Jose (408-882-2900 x-2926), or from:

- State Rules and Judicial Council Forms: www.courtinfo.ca.gov/forms and www.courtinfo.ca.gov/rules
- Local Rules and Forms: www.sccsuperiorcourt.org/civil/rule1toc.htm
- Rose Printing, 49 N. First St., San Jose (408-293-8177)

For other local information, visit the Court's Self-Service website www.sccselfservice.org and select "Civil."

CASE MANAGEMENT CONFERENCE (CMC): You must meet with the other parties and discuss the case, in person or by telephone, at least 30 calendar days before the CMC. You must also fill out, file and serve a Case Management Statement (Judicial Council form CM-110) at least 15 calendar days before the CMC. You or your attorney must appear at the CMC. You may ask to appear by telephone – see Local Civil Rule 8.

Your Case Management Judge is: Kevin J Murphy DEPT: 22

The first CMC is scheduled as follows: (Completed by Clerk of Court)
Date: NOV 6 2007 Time: 3:00 PM Dept.: 22

The next CMC is scheduled as follows: (Completed by party if the first CMC was continued or has passed)
Date: _____ Time: _____ Dept.: _____

ALTERNATIVE DISPUTE RESOLUTION (ADR): If all parties have appeared and filed a completed ADR Stipulation Form (local form CV-5008) at least 15 days before the CMC, the Court will cancel the CMC and mail notice of an ADR Status Conference. Visit the Court's website at www.sccsuperiorcourt.org/civil/ADR/ or call the ADR Administrator (408-882-2100 x-2156) for a list of ADR providers and their qualifications, services, and fees.

WARNING: Sanctions may be imposed if you do not follow the California Rules of Court or the Local Rules of Court.

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SANTA CLARA
ALTERNATIVE DISPUTE RESOLUTION
INFORMATION SHEET / CIVIL DIVISION

Many cases can be resolved to the satisfaction of all parties without the necessity of traditional litigation, which can be expensive, time consuming, and stressful. The Court finds that it is in the best interests of the parties that they participate in alternatives to traditional litigation, including arbitration, mediation, neutral evaluation, special masters and referees, and settlement conferences. Therefore, all matters shall be referred to an appropriate form of Alternative Dispute Resolution (ADR) before they are set for trial, unless there is good cause to dispense with the ADR requirement.

What is ADR?

ADR is the general term for a wide variety of dispute resolution processes that are alternatives to litigation. Types of ADR processes include mediation, arbitration, neutral evaluation, special masters and referees, and settlement conferences, among others forms.

What are the advantages of choosing ADR instead of litigation?

ADR can have a number of advantages over litigation:

- < ADR can save time. A dispute can be resolved in a matter of months, or even weeks, while litigation can take years.
- < ADR can save money. Attorney's fees, court costs, and expert fees can be reduced or avoided altogether.
- < ADR provides more participation. Parties have more opportunities with ADR to express their interests and concerns, instead of focusing exclusively on legal rights.
- < ADR provides more control and flexibility. Parties can choose the ADR process that is most likely to bring a satisfactory resolution to their dispute.
- < ADR can reduce stress. ADR encourages cooperation and communication, while discouraging the adversarial atmosphere of litigation. Surveys of parties who have participated in an ADR process have found much greater satisfaction than with parties who have gone through litigation.

What are the main forms of ADR offered by the Court?

- < Mediation is an informal, confidential process in which a neutral party (the mediator) assists the parties in understanding their own interests, the interests of the other parties, and the practical and legal realities they all face. The mediator then helps the parties to explore options and arrive at a mutually acceptable resolution of the dispute. The mediator does not decide the dispute. The parties do.
- < Mediation may be appropriate when:
 - < The parties want a non-adversary procedure
 - < The parties have a continuing business or personal relationship
 - < Communication problems are interfering with a resolution
 - < There is an emotional element involved
 - < The parties are interested in an injunction, consent decree, or other form of equitable relief

-over-

ALTERNATIVE DISPUTE RESOLUTION INFORMATION SHEET/ CIVIL DIVISION

- < Arbitration is a normally informal process in which the neutral (the arbitrator) decides the dispute after hearing the evidence and arguments of the parties. The parties can agree to binding or non-binding arbitration. Binding arbitration is designed to give the parties a resolution of their dispute when they cannot agree by themselves or with a mediator. If the arbitration is non-binding, any party can reject the arbitrator's decision and request a trial.

Arbitration may be appropriate when:

- < The action is for personal injury, property damage, or breach of contract
 - < Only monetary damages are sought
 - < Witness testimony, under oath, is desired
 - < An advisory opinion is sought from an experienced litigator (if a non-binding arbitration)
- < Neutral evaluation is an informal process in which a neutral party (the evaluator) reviews the case with counsel and gives a non-binding assessment of the strengths and weaknesses on each side and the likely outcome. The neutral can help parties to identify issues, prepare stipulations, and draft discovery plans. The parties may use the neutral's evaluation to discuss settlement.

Neutral evaluation may be appropriate when:

- < The parties are far apart in their view of the law or value of the case
 - < The case involves a technical issue in which the evaluator has expertise
 - < Case planning assistance would be helpful and would save legal fees and costs
 - < The parties are interested in an injunction, consent decree, or other form of equitable relief
- < Special masters and referees are neutral parties who may be appointed by the court to obtain information or to make specific fact findings that may lead to a resolution of a dispute.

Special masters and referees can be particularly effective in complex cases with a number of parties, like construction disputes.

- < Settlement conferences are informal processes in which the neutral (a judge or an experienced attorney) meets with the parties or their attorneys, hears the facts of the dispute, and normally suggests a resolution that the parties may accept or use as a basis for further negotiations.

Settlement conferences can be effective when the authority or expertise of the judge or experienced attorney may help the parties reach a resolution.

What kind of disputes can be resolved by ADR?

Although some disputes must go to court, almost any dispute can be resolved through ADR. This includes disputes involving business matters; civil rights; corporations; construction; consumer protection; contracts; copyrights; defamation; disabilities; discrimination; employment; environmental problems; harassment; health care; housing; insurance; intellectual property; labor, landlord/tenant; media; medical malpractice and other professional negligence; neighborhood problems; partnerships; patents; personal injury; probate; product liability; property damage; real estate; securities; and sports, among other matters.

Where can you get assistance with selecting an appropriate form of ADR and a neutral for your case, for information about ADR procedures, or for other questions about ADR?

Contact:

Santa Clara County Superior Court
ADR Administrator
408-882-2530

Santa Clara County DRPA Coordinator
408-792-2704

ALTERNATIVE DISPUTE RESOLUTION INFORMATION SHEET/ CIVIL DIVISION